

1 HONORABLE RONALD B. LEIGHTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 ARTHUR S. WEST,

11 Plaintiff,

12 v.

13 UNITED STATES SECRETARY OF
14 TRANSPORTATION, FEDERAL
15 AVIATION ADMINISTRATION, U.S.
16 ARMY CORPS OF ENGINEERS,
WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION,

17 Defendants.

Case No. C06-5516RBL

ORDER

18 THIS MATTER comes on before the above-entitled Court upon the federal defendants' Motion to Set
19 Aside Initial Scheduling Order Dates [Dkt. #17], Washington State Department of Transportation's Motion
20 for Relief from Minute Order Deadlines [Dkt. #16], and plaintiff's Motion for a Preliminary Injunction Pending
21 FAA Project Approval [Dkt. #20].

22 Having considered the entirety of the records and file herein, the Court finds and rules as follows:

23 This case is primarily a challenge under the Administrative Procedures Act ("APA"), 5 U.S.C. §§701-
24 706 et seq. to construction at the Port of Olympia. Defendants seek relief from this Court's Minute Order
25 [Dkt. #8] which required the parties to complete a Fed. R. Civ. P. 26(f) conference, serve initial disclosures,
26 and file a Joint Status Report. Because Fed. R. Civ. P. 26(a)(1)(E)(i) exempts actions to review an
27 administrative record from these requirements, the motions will be **GRANTED**.

1 Plaintiff seeks a preliminary injunction enjoining “the Port of Olympia from commencing and/or
 2 continuing with further construction related to the ‘line of sight’ airport improvement project prior to their
 3 submission of a grant and project application . . .” and prior to FAA approval. [Dkt. #20].¹

4 In order to justify the extraordinary measure of injunctive relief under Federal Rule of Civil Procedure
 5 65, the moving party bears a heavy burden. *Canal Authority of the State of Florida v. Callaway*, 489 F.2d
 6 567 (5th Cir. 1974). A party seeking a preliminary injunction must fulfill one of two standards: the “traditional”
 7 or the “alternative.” *Johnson v. California State Bd. Of Accountancy*, 72 F.3d 1427, 1430 (9th Cir. 1995);
 8 *Cassim v. Bowen*, 824 F.2d 791, 795 (9th Cir. 1987). Although two tests are recognized, they are not totally
 9 distinct tests. Rather, they are “extremes of a single continuum.” *Funds for Animals, Inc. v. Lujan*, 962 F.2d
 10 1391, 1400 (9th Cir. 1992).

11 Under the traditional standard, a court may issue preliminary relief if it finds that: (1) the moving party
 12 will suffer irreparable injury if the relief is denied; (2) the moving party will probably prevail on the merits; (3)
 13 the balance of potential harm favors the moving party; and (4) the public interest favors granting relief.
 14 *Cassim*, 824 F.2d at 795. Under the alternative standard, the moving party may meet its burden by
 15 demonstrating either (1) a combination of probable success and the possibility of irreparable injury or (2) that
 16 serious questions are raised and the balance of hardships tips sharply in its favor. *Id.* at 795.

17 Plaintiff argues the Port of Olympia continues to perform construction at the airport without FAA
 18 approval and in violation of state and federal law. However, he does not present any evidence other than his
 19 Declaration unsupported by any independent facts that construction is ongoing, that there are threatened
 20 species on site, or that other harms are occurring. Additionally, the federal and state governments have filed
 21 motions to dismiss (noted May 18, 2007) which make facially plausible arguments that this Court does not
 22 have subject matter jurisdiction in this case. Under either the traditional or alternative test, plaintiff fails to
 23 carry his burden to obtain preliminary injunctive relief in this case because he fails to demonstrate the likelihood
 24 of success on the merits. The motion for a preliminary injunction will be **DENIED**.

25 **IT IS SO ORDERED.**

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 28 ¹The Court has considered the Port of Olympia’s Motion to Continue, and or Accept Reply and Opposing Motion for
 Injunction [Dkt. #23]. The Court will deny the motion insofar as it seeks to continue the plaintiff’s motion for a preliminary
 injunction and will grant the motion insofar as it requests the Court consider it as a reply.

The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing pro se.

Dated this 20th day of April, 2007.

Ronald B. Leighton
RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE